

RECORDATION NO. 6263-A Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

Collateral Assignment of Lease and Agreement

between

FIRST WESTERN BANK AND TRUST COMPANY,

as Owner-Trustee

and

UNITED STATES TRUST COMPANY OF NEW YORK,

Trustee

Dated as of August 1, 1971

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT

dated as of August 1, 1971, by and between FIRST WESTERN BANK AND TRUST COMPANY, as Owner-Trustee (hereinafter called the Company), and UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee (hereinafter called the Trustee), under an Equipment Trust Agreement dated as of August 1, 1971 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

WHEREAS the Company, as Lessor, and Pullman Incorporated, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Equipment Trust Agreement), providing for the leasing by the Company to the Lessee of the Cars (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Equipment Trust Agreement and as an inducement to the purchasers of the equipment trust certificates to be issued under the Equipment Trust Agreement to purchase said certificates, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Trustee;

Now, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. As security for the payment and performance of its obligations under the Equipment Trust Agreement, the Company hereby assigns, transfers, and sets over unto the Trustee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all

notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee at 130 John Street, New York, N. Y., attention of Corporate Trust Division. The Trustee will accept all Payments and all payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable (or due and payable on the first day of the next succeeding month if such Payment or payments are made prior to the first day of any month) under the Equipment Trust Agreement and the Trustee shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts so due and payable by the Company under the Equipment Trust Agreement; and *second*, so long as, to the actual knowledge of the Trustee, no Event of Default (as defined in the Equipment Trust Agreement) or event which, to the actual knowledge of the Trustee with notice or lapse of time or both, could constitute an Event of Default shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Trustee. So long as, to the actual knowledge of the Trustee, an Event of Default or event which, to the actual knowledge of the Trustee with notice of lapse of time or both, could constitute an Event of Default shall then be continuing, the Trustee shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Equipment Trust Agreement. Anything in this Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been paid by the Lessee pursuant to the Lease or this Assignment.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not sub-

ject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee. The Trustee also shall not have any obligation or liability in respect of the provisions of Section 8(e), (f) or (g) of the Lease to the Lessor or the holders of the equipment trust certificates issued under the Equipment Trust Agreement or otherwise.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Trustee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Trustee by this Assignment in trust for the Trustee and to turn them over to the Trustee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i)

appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of ~~10~~¹² $\frac{1}{2}$ % per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Trustee may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (b) notwithstanding this Assignment, the Company will perform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, and (c) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease and the Equipment Trust Agreement) or any event which with notice and/or lapse of time could constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Cars. The taking possession of the Cars and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company agrees with the Trustee that in any suit or proceeding brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or

damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Agreement shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as

shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Car may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 130 John Street, New York, New York 10038, attention of Corporate Trust Department, or at such other address as the Trustee shall designate.

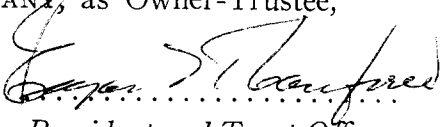
13. No recourse shall be had in respect of any obligation due under this Assignment, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, or against the beneficiary or beneficiaries of the trust under the Trust Agreement (disclosed or undisclosed), solely by reason of the fact that such person is an incorporator, stockholder, director, officer or beneficiary, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Assignment.

15. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee,

[CORPORATE SEAL]

by 
Vice President and Trust Officer.

Attest:


~~Assistant~~ Secretary.

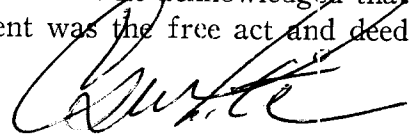
Accepted:

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

by 
Assistant Vice President.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.:

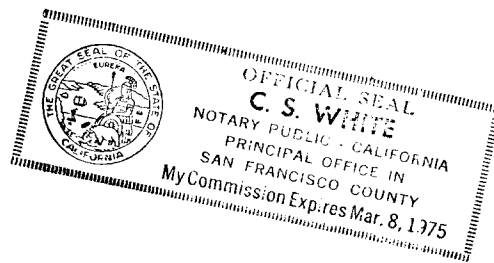
On this 28 day of July, 1971, before me personally appeared
EDGAR H. CANFIELD, to me personally known, who, being
by me duly sworn, says that he is a Vice President and Trust Officer of
FIRST WESTERN BANK AND TRUST COMPANY, that the seal affixed
to the foregoing instrument is the corporate seal of said corporation,
that said instrument was signed and sealed on behalf of said corpora-
tion by authority of its Board of Directors and he acknowledged that
the execution of the foregoing instrument was the free act and deed
of said corporation.



.....
Notary Public

[NOTARIAL SEAL]

My commission expires



LESSEE'S CONSENT AND AGREEMENT

The undersigned, a Delaware corporation, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Collateral Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the purchasers of the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated of August 1, 1971, between United States Trust Company of New York, as Trustee (hereinafter called the Trustee) and First Western Bank and Trust Company, as Owner-Trustee (hereinafter called the Lessor) (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing its purchase of the units of railroad equipment (hereinafter called the Cars) being leased by the Lessor to the undersigned pursuant to the Lease and in consideration of other good and valuable consideration, the undersigned agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust Division (or at such other address as may be furnished in writing to the undersigned by the Trustee); it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments is absolute and unconditional;

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor;

(3) the Payments shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee against, any liens,

charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments as provided in the Assignment;

(4) the Trustee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Trustee, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of August 1, 1971.

PULLMAN INCORPORATED,

by *[Signature]*.....
Vice President.

[CORPORATE SEAL]

Attest:

[Signature]
Assistant Secretary.

Accepted:

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by *[Signature]*.....
Assistant Vice President.

.....

[NOTARIAL SEAL]